

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH.

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Registration C.A. No. 745 of 1989

Bhagwan Das Applicant.

Versus

Union of India
and others Respondents.

Hon. Mr. Justice J.C. Srivastava, V.C.
Hon'ble Mr. K. Oraiva, Member (A)

(By Hon. Mr. Justice J.C. Srivastava, V.C.)

As the pleadings of this case are complete. We are going to dispose of this case at this stage with the consent of the counsel of the parties.

2. By means of this application, the applicant has prayed for quashing the impugned communication dated 18.5.1989 as well as the recommendation of the Departmental Promotion Committee dated 25/26.5.1989. The applicant is posted as Tax Assistant in the office of the Central Excise Collectorate, Kanpur. 37 posts of Inspectors, Central Excise fell vacant in the year 1988-89 and 8 posts of Inspectors fell vacant in the year 1989 itself. Admittedly, these posts are selection posts, and the ~~selections~~ were to be made by the departmental promotion committee from amongst the Tax Assistants. According to the applicant, the instruction which has been issued by the Ministry of Personnel has not been given effect to in toto in the matter of selection that is why the selection has become questionable. There is no denial of fact

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that the instruction states that all the persons were included in the panel and after making enquiry in the same, their names shall be arranged. The Departmental Promotion Committee met on 25/26.3.1989 and according to the applicant his name was also included in the panel. 111 candidates were considered for promotion but instead of making promotion in order of seniority as contemplated in the revised instructions, dated 10.3.1989 the Departmental Promotion Committee proceeded ignoring the aforesaid instructions, as such, the Ministry of Finance issued a Telex on 9.8.1989 directing the Collector, Central Excise, Kanpur to revise and review the Departmental Promotion Committee and its recommendation by following the said instruction. The Collector, Central Excise, Kanpur was not satisfied with the procedures adopted as such he made a reference to the Central Board that the procedures adopted in the revised instructions should be strictly followed. According to the applicant, in case the instruction should have been followed, the applicant would have been selected in order of seniority and his claim has been bypassed and as a matter of fact, others have been promoted and promotion to the post of Superintendent has also been made ^{from} the post of Inspectors in accordance with the instruction.

3. The respondents have opposed the claim of the applicant. According to them there was no violation of instruction dated 25.4.1989 and it was implemented regarding the reservation in the D.P.C. held on 25/26.5.1989 in respect of half reserved category.

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On 18.8.1989, a Telex was issued ~~desecred~~ communicating that there is no need to hold a Review D.P.C. and this clarification was received from the Ministry through Telex dated 30.8.1989 that the D.P.C. Minutes for promotion to the grade of Inspector be implemented and that is why the same was implemented.

4. It appears that the applicant was accorded opportunity to appear before the D.P.C. and his candidature was considered, but in view of his lower merit, he could not be selected and he has exhausted his two chances for attaining the age of 38 years before crossing the age of 45 years and the promotion order of 34 incumbents on provisional basis was made on 31.8.1989 and the promotion order of 8 other incumbents was also made on 28.9.1989 on provisional basis against the existing vacancies. The remaining names in the panel of Inspectors are against the anticipated vacancies upto 31st March, 1990 were calculated. Out of 45 vacancies including posts against cost recovery 42 vacancies have been filled by promotion of Tax Assistant/Upper Division Clerks/ Stenos by issuing order of 34 incumbents dated 31 st August, 1989. The facts, as stated above, indicates that the case of the applicant has also been considered by the D.P.C. His grievance is that actually order of seniority should have been followed. It may be, after selection, the order of seniority could have been followed. But as the applicant's merit was lower and the juniors of the applicant were on higher merit and accordingly, they were selected and the selection in these circumstances can not be said to be against the

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instructions prescribed and is also against the law. Accordingly, this application deserves to be dismissed ^{and it is dismissed} No order as to the costs.

Ravinder
Member (n)

Dated: 13.11.1992

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Vice-Chairman